

BILL ANALYSIS

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S.B. 8
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A series of undercover videos released during the summer of 2015 allegedly revealed employees of Planned Parenthood discussing potentially unlawful actions including the sale of human fetal tissue. The videos and news stories showed top Planned Parenthood executives casually discussing the donation, and potentially the sale, of fetal tissues and organs. Furthermore, the videos show discussions of alterations to abortion procedures and methods, in violation of federal laws.

Federal law makes it "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce." However, this prohibition, by itself, is inadequate because these offenses must affect interstate commerce in order to be unlawful.

Similarly, federal law prohibits providing incentives to persuade a woman to get pregnant for the purposes of selling fetal tissue, but this provision can only be enforced if it affects interstate commerce.

Another shortcoming discovered in existing federal and state statute is the exception for "valuable consideration," including payments for the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue. These reimbursements may be acceptable for fully developed organ donations, but allowances for any fees or reimbursable expenses provides opportunity for the effective sale of human fetal tissue.

In addition to the issues listed above, gaps in federal law exist regarding the ban on partial birth abortion. A partial birth abortion involves delivering a half-living fetus and then intentionally performing an act that will kill the fetus.

In 2003, the federal government enacted a ban on partial birth abortion, and it was upheld by the Supreme Court in 2006. However, this federal statute has not been codified in Texas statute and therefore does not allow state law enforcement to ensure the ban is enforced. This leaves the federal government with the sole discretion to decide when and how to prosecute providers who perform this criminal act. Federal statute should be codified in state statute to ensure state law enforcement will have the full authority and direction to take enforcement action against anyone performing this act.

This bill is agreed to language by Texas Alliance for Life, Texas Catholic Conference of Bishops, and Texans for Life Coalition.

Key Provisions:

- Prohibit the donation of human fetal tissue acquired as a result of elective abortions.
- Codify federal statute to ban partial birth abortions.
- Create a criminal offense for the receipt of any payment made in exchange for human fetal tissue

- Prohibit the solicitation or acceptance of tissue from fetuses gestated for research purposes.
- Increase criminal penalties for buying or selling human fetal tissue.
- Make it unlawful to offer or provide a woman with incentives to undergo an abortion procedure or donate fetal tissue.
- Only allow fetal tissue including the umbilical cord and placenta to be donated from hospitals, ambulatory surgical centers, or birthing centers for the purposes of research at an accredited university.
- Require doctors to certify that no alteration of the timing, method, or procedures used to terminate the pregnancy was made for the purposes of obtaining the tissue.
- Create a reporting requirement for eligible entities to inform the Department of State Health Services about instances of fetal tissue donation.
- Require records maintenance for abortion providers for a period of seven years after consent was given, or if the woman is under 18 years of age, the later of the woman's 23rd birthday or seven years after the date of consent.

As proposed, S.B. 8 amends current law relating to certain prohibited abortions and the treatment and disposition of a human fetus, human fetal tissue, and other tissue resulting from pregnancy; creates a civil cause of action; and creates offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Texas Health and Human Services Commission in SECTION 7 (Chapter 173, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Health and Safety Code, by adding Subchapter F, as follows:

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. Defines "partial-birth abortion" and "physician."

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) Prohibits a physician or other person from knowingly performing a partial-birth abortion.

(b) Provides that Subsection (a) does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

Sec. 171.103. CRIMINAL PENALTY. Provides that a person who violates Section 171.102 commits an offense. Provides that an offense is a state jail felony.

Sec. 171.104. CIVIL LIABILITY. (a) Provides that, except as provided by Subsection (b), the father of the fetus or parent of the mother of the fetus, if the mother is younger than 18 years of age at the time of the partial-birth abortion, may bring civil action to obtain appropriate relief, including money damages for physical injury, mental anguish, and emotional distress, and exemplary damages equal to three times the cost of the partial-birth abortion.

(b) Prohibits a person from bringing or maintaining an action under this section if the person consented to the partial-birth abortion, or the person's criminally injurious conduct resulted in the pregnancy.

Sec. 171.105. HEARING. (a) Provides that a physician who is the subject of a criminal or civil action for a violation may request a hearing before the Texas Medical Board (TMB) on whether the physician's conduct was necessary to save the life of a mother whose life was endangered by certain physical conditions.

(b) Provides that TMB's findings are admissible in any court proceeding against the physician arising from that conduct. Requires the court, on the physician's motion, to delay the beginning of a criminal or civil trial for not more than 30 days for the hearing to be held under Subsection (a).

Sec. 171.106. APPLICABILITY. Prohibits a woman on whom a partial-birth abortion is performed or attempted in violation of this subchapter from being prosecuted under this subchapter or for conspiracy to commit a violation.

SECTION 2. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 173, as follows:

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE AND OTHER TISSUE RESULTING FROM PREGNANCY

Sec. 173.001. DEFINITIONS. Defines "authorized facility" and "human fetal tissue."

Sec. 173.002. DEPARTMENT ENFORCEMENT. Requires the Department of State Health Services (DSHS) to enforce this chapter.

Sec. 173.003. PROHIBITED DONATION. Prohibits a person from donating human fetal tissue, placenta, or an umbilical cord except as authorized by this chapter.

Sec. 173.004. DONATION BY AUTHORIZED FACILITY. (a) Authorizes only an authorized facility to donate human fetal tissue. Authorizes an authorized facility to donate human fetal tissue only to an accredited university for use in research that has been approved by an institutional review board.

(b) Authorizes only an authorized facility to donate placenta or an umbilical cord.

(c) Prohibits an authorized facility from donating human fetal tissue, placenta, or an umbilical cord that is obtained from an elective abortion.

Sec. 173.005. INFORMED CONSENT REQUIRED. Prohibits an authorized facility from donating human fetal tissue unless the facility has obtained the written, voluntary, and informed consent of the woman from whose pregnancy the fetal tissue is obtained. Requires the consent to be provided on a standard form prescribed by DSHS.

Sec. 173.006. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person offers a woman monetary or other consideration to have an abortion for the purpose of donating human fetal tissue or to consent to the donation of human fetal tissue or if the person knowingly or intentionally solicits or accepts tissue from a fetus gestated solely for research purposes.

(b) Provides that an offense under this section is a Class C misdemeanor punishable by a fine of not more than \$10,000.

Sec. 173.007. RECORD RETENTION. Prohibits, unless another law requires a longer period of record retention, an authorized facility from disposing of any medical record relating to a woman who consents to the donation of human fetal tissue before certain dates.

Sec. 173.008. ANNUAL REPORT. Requires an authorized facility that donates human fetal tissue under this chapter to submit an annual report to DSHS that includes for each donation the specific type of fetal tissue donated and the donation's recipient.

SECTION 3. Amends Section 164.052(a), Occupations Code, to include performing, inducing, or attempting to perform or induce an abortion in violation of Subchapter F, Chapter 171, Health and Safety Code, in the list of certain prohibited practices for a physician or an applicant for a medical license.

SECTION 4. Amends Section 164.055(b), Occupations Code, to provide that the criminal penalties provided by Section 165.152 (Practicing Medicine in Violation of Subtitle) do not apply to a violation of Section 170.002 (Prohibited Acts; Exemption), Health and Safety Code, or Subchapter C (Abortion Prohibited at or After 20 Weeks Post-Fertilization) or F, Chapter 171, Health and Safety Code, rather than a violation of Section 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

SECTION 5. Amends Section 48.02(a), Penal Code, to redefine "human organ."

SECTION 6. Amends Chapter 48, Penal Code, by adding Section 48.03, as follows:

Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE. (a) Defines "human fetal tissue."

(b) Provides that a person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for valuable consideration.

(c) Provides that an offense under this section is a state jail felony.

(d) Provides that it is an exception to the application of this section that the actor is an employee of or under contract with an accredited university and acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling an authorized donation.

SECTION 7. Requires, not later than December 1, 2017, DSHS to prescribe the standard consent form required by Section 173.005, Health and Safety Code, and the executive commissioner of the Texas Health and Human Services Commission to adopt any rules necessary to implement Chapter 173, Health and Safety Code, as added by this Act.

SECTION 8. (a) Makes application of Subchapter F, Chapter 171, Health and Safety Code, as added by this Act, prospective.

(b) Provides that Sections 173.002, 173.003, 173.004, and 173.005, Health and Safety Code, as added by this Act apply to the donation of human fetal tissue, placenta, or an umbilical cord that occurs on or after the effective date of this Act, regardless of whether the human fetal tissue, placenta, or umbilical cord was acquired before, on, or after that date.

(c) Provides that an authorized facility is not required to make an initial annual report under Section 173.008, Health and Safety Code, as added by this Act before January 1, 2019.

(d) Makes application of Chapter 48, Penal Code, as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2017.